

INSTRUCTIONS FOR COMPLETING THE DATA USE AGREEMENT (DUA)

(AGREEMENT FOR USE OF HEALTH CARE FINANCING ADMINISTRATION (HCFA) DATA CONTAINING INDIVIDUAL IDENTIFIERS)

This agreement is needed as part of the review of your data request to ensure compliance to the requirements of the Privacy Act, and must be completed prior to the release of specified data files containing individual identifiers.

Directions for the completion of the agreement follow:

- o First paragraph, enter the Requestor's Organization Name.**
- o Item #1, enter the Requestor's Organization Name.**
- o Item #4, enter the Custodian Name, Company/Organization, Address, Phone Number (including area code), and E-Mail Address (if applicable). The Custodian of files is defined as that person who will have actual possession of and responsibility for the data files. This section should be completed even if the Custodian and Requestor are the same.**
- o Item #5 will be completed by a HCFA representative.**
- o Item #6 is to be completed with the Study and or Project Name and a brief description of the purpose for which the file(s) will be used.**
- o Item #7 should delineate the files and years the Requestor is requesting. Specific file names should be completed. If these are unknown, you may contact a HCFA representative.**
- o Item #8, complete by entering the Study/Project's date of completion.**
- o Item #15 will be completed by HCFA.**
- o Item #19 is to be completed by Requestor.**
- o Item #20 is to be completed by Custodian.**
- o Item #21 should be completed if your study is funded by another Federal Agency. The Federal Agency Name (Other than HCFA) should be entered in the blank. The Federal Project Officer should complete and sign the remaining portions of this section. If this does not apply, leave blank.**
- o Item #22 will be completed by a HCFA representative.**
- o Item #23 will be completed by a HCFA representative.**

Once the DUA is received and reviewed for privacy issues, a completed and signed copy will be sent to the Requestor for their files.

DUA # _____

DATA USE AGREEMENT

(AGREEMENT FOR USE OF HEALTH CARE FINANCING ADMINISTRATION (HCFA) DATA CONTAINING INDIVIDUAL-SPECIFIC INFORMATION)

In order to secure data that resides in a HCFA Privacy Act System of Records, and in order to ensure the integrity, security, and confidentiality of information maintained by the HCFA, and to permit appropriate disclosure and use of such data as permitted by law, HCFA and _____ enter into this agreement to comply with the following specific paragraphs.

1. This Agreement is by and between the Health Care Financing Administration (HCFA) , a component of the U.S. Department of Health and Human Services (DHHS), and _____, hereinafter termed "User."
2. This Agreement addresses the conditions under which HCFA will disclose and the User will obtain and use the HCFA data file(s) specified in section 7. This Agreement supersedes any and all agreements between the parties with respect to the use of data from the files specified in section 7 and preempts and overrides any instructions, directions, agreements, or other understanding in or pertaining to any grant award or other prior communication from the Department of Health and Human Services or any of its components with respect to the data specified herein. Further, the terms of this Agreement can be changed only by a written modification to this Agreement or by the parties adopting a new agreement. The parties agree further that instructions or interpretations issued to the User concerning this Agreement or the data specified herein, shall not be valid unless issued in writing by the HCFA point-of-contact specified in section 5 or the HCFA signatory to this Agreement shown in section 22.
3. The parties mutually agree that HCFA retains all ownership rights to the data file(s) referred to in this Agreement, and that the User does not obtain any right, title, or interest in any of the data furnished by HCFA.
4. The parties mutually agree that the following named individual is designated as "Custodian" of the file(s) on behalf of the User and will be personally responsible for the observance of all conditions of use and for establishment and maintenance of security arrangements as specified in this Agreement to prevent unauthorized use. The User agrees to notify HCFA within fifteen (15) days of any change of custodianship. The parties mutually agree that HCFA may disapprove the appointment of a custodian or may require the appointment of a new custodian at any time.

March 25, 1999

(Name of Custodian)

(Company/Organization)

(Street Address)

(City/State/ZIP Code)

(Phone No. - Including Area Code and E-Mail Address, If Applicable)

5. The parties mutually agree that the following named individual will be designated as “point-of-contact” for the Agreement on behalf of HCFA.

(Name of Contact)

(Title/Component)

(Street Address)

(Mail Stop)

(City/State/ZIP Code)

(Phone No. - Including Area Code and E-Mail Address, If Applicable)

6. The User represents and warrants, and in furnishing the data file(s) specified in section 7 HCFA relies upon such representation and warranty, that such data file(s) will be used solely for the following purpose(s).

The User represents and warrants further that the facts and statements made in any study or research protocol or project plan submitted to HCFA for each purpose are complete and accurate. Further, the User represents and warrants that said study protocol(s) or project plans, as have been approved by HCFA or other appropriate entity as HCFA may determine, represent the total use(s) to which the data file(s) specified in section 7 will be put.

The User represents and warrants further that, except as specified in an Attachment to this Agreement or except as HCFA shall authorize in writing, the User shall not disclose, release, reveal, show, sell, rent, lease, loan, or otherwise grant access to the data covered by this Agreement to any person. The User agrees that, within the User organization, access to the data covered by this Agreement shall be limited to the minimum number of individuals necessary to achieve the purpose stated in this section and to those individuals on a need-to-know basis only.

7. The following HCFA data file(s) is/are covered under this Agreement.

| File | Year(s) |
|-------|---------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

8. The parties mutually agree that the aforesaid file(s) (and/or any derivative file(s) [includes any file that maintains or continues identification of individuals]) may be retained by the User until _____, hereinafter known as the “retention date.” The User agrees to notify HCFA within 30 days of the completion of the purpose specified in section 6 if the purpose is completed before the aforementioned retention date. Upon such notice or retention date, whichever occurs sooner, HCFA will notify the User either to return all data files to HCFA at the User’s expense or to destroy such data. If HCFA elects to have the User destroy the data, the User agrees to certify the destruction of the files in writing within 30 days of receiving HCFA’s instruction. A statement certifying this action must be sent to HCFA. If HCFA elects to have the data returned, the User agrees to return all files to HCFA within 30 days of receiving notice to that effect. The User agrees that no data from HCFA records, or any parts thereof, shall be retained when the aforementioned file(s) are returned or destroyed unless authorization in writing for the retention of such file(s) has been received from the appropriate Systems Manager or the person designated in item No. 22 of this Agreement. The User acknowledges that stringent adherence to the aforementioned retention date is required, and that the User shall ask HCFA for instructions under this paragraph if instructions have not been received after 30 days after the retention date.

9. The User agrees to establish appropriate administrative, technical, and physical safeguards to protect the confidentiality of the data and to prevent unauthorized use or access to it. The safeguards shall provide a level and scope of security that is not less than the level and scope of security established by the Office of Management and Budget (OMB) in OMB Circular No. A-130, Appendix III--Security of Federal Automated Information Systems, which sets forth guidelines for security plans for automated information systems in Federal agencies. The User acknowledges that the use of unsecured telecommunications, including the Internet, to transmit individually identifiable or deducible information derived from the file(s) specified in section 7 is prohibited. Further, the User agrees that the data must not be physically moved or transmitted in any way from the site indicated in item number 4 without written approval from HCFA.

10. The User agrees that the authorized representatives of HCFA or DHHS Office of the Inspector General will be granted access to premises where the aforesaid file(s) are kept for the purpose of inspecting security arrangements confirming whether the User is in compliance with the security requirements specified in paragraph 9.

11. The User agrees that no findings, listing, or information derived from the file(s) specified in section 7, with or without identifiers, may be released if such findings, listing, or information contain any combination of data elements that might allow the deduction of a beneficiary's identification without first obtaining written authorization from the appropriate System Manager or the person designated in item number 22 of this Agreement. Examples of such data elements include but are not limited to geographic indicator, age, sex, diagnosis, procedure, admission/discharge date(s), or date of death. The User agrees further that HCFA shall be the sole judge as to whether any finding, listing, information, or any combination of data extracted or derived from HCFA's files identifies or would, with reasonable effort, permit one to identify an individual or to deduce the identity of an individual to a reasonable degree of certainty.

12. The User agrees that, absent express written authorization from the appropriate System Manager or the person designated in item number 22 of this Agreement to do so, the User shall make no attempt to link records included in the file(s) specified in section 7 to any other identifiable source of information. This includes attempts to link to other HCFA data file(s). The inclusion of linkage of specific files in a study protocol approved in accordance with section 6 is considered express written authorization from HCFA.

13. The User agrees to submit to HCFA a copy of all findings within 30 days of making such findings. The parties mutually agree that the User has "made findings" with respect to the data covered by this Agreement when the User prepares any report or other writing for submission to any third party (including but not limited to any manuscript to be submitted for publication) concerning any purpose specified in section 6 (regardless of whether the report or other writing expressly refers to such purpose, to HCFA, or to the files specified in section 7 or any data derived from such files). The User agrees not to submit such findings to any third party until receiving HCFA's approval to do so. The User agrees further to submit its findings to the National Technical Information Service (NTIS, 5285 Port Royal Road, Springfield, Virginia 22161) within 30 days of receiving notice from HCFA to do so.

14. The User understands and agrees that if they may not reuse original or derivative data file(s) without prior written approval from the appropriate System Manager or the person designated in section 22 of this Agreement.

15. The parties mutually agree that the following specified Attachments are part of this Agreement:

16. The User agrees that in the event HCFA determines or has a reasonable belief that the User has made or may have made disclosure of the aforesaid file(s) that is not authorized by this Agreement or other written authorization from the appropriate System Manager or the person designated in item number 22 of this Agreement, HCFA in its sole discretion may require the User to: (a) promptly investigate and report to HCFA the User's determinations regarding any alleged or actual unauthorized disclosure, (b) promptly resolve any problems identified by the investigation; (c) if requested by HCFA, submit a formal response to an allegation of unauthorized disclosure; (d) if requested by HCFA, submit a corrective action plan with steps designed to prevent any future unauthorized disclosures; and (e) if requested by HCFA, return data files to HCFA. The User understands that as a result of HCFA's determination or reasonable belief that unauthorized disclosures have taken place, HCFA may refuse to release further HCFA data to the User for a period of time to be determined by HCFA.

17. The User hereby acknowledges that criminal penalties under § 1106(a) of the Social Security Act (42 U.S.C. § 1306(a)), including a fine not exceeding \$1,000 or imprisonment not exceeding 5 years, or both, may apply with respect to any disclosure of information in the file(s) specified in section 7 that is inconsistent with the terms of this Agreement. The User further acknowledges that criminal penalties under the Privacy Act (5 U.S.C. § 552a(i) (3)) may apply if it is determined that the Requestor or Custodian, or any individual employed or affiliated therewith, knowingly and willfully obtained the file(s) under false pretenses. Any person found guilty under the Privacy Act shall be guilty of a misdemeanor and fined not more than \$5,000. Further, the User acknowledges that criminal penalties may be imposed under 18 U.S.C. § 641, which provides that if it is determined that the User, or any individual employed or affiliated therewith, has taken or converted to his own use data file(s), or received the file(s) knowing that they were stolen or converted, they shall be fined under Title 18, imprisoned not more than 10 years, or both. In addition, the User and any individual employed or affiliated therewith, may be subject to civil suit under the Privacy Act for damages which occur as a result of willful or intentional actions which violate an individual's rights under the Privacy Act.

18. By signing this Agreement, the User agrees to abide by all provisions set out in this Agreement for protection of the data file(s) specified in section 7, and acknowledges having received notice of potential criminal, administrative, or civil penalties for violation of the terms of the Agreement.

19. On behalf of the User the undersigned individual hereby attests that he or she is authorized to enter into this Agreement and agrees to all the terms specified herein.

(Name and Title of Individual - Typed or Printed)

(Company/Organization)

(Street Address)

(City/State/ZIP Code)

(Phone No. - Including Area Code and E-Mail Address, If Applicable)

(Signature)

(Date)

20. The Custodian, as named in paragraph 4, hereby acknowledges his/her appointment as Custodian of the aforesaid file(s) on behalf of the User, and agrees personally and in a representative capacity to comply with all of the provisions of this Agreement on behalf of the User.

(Typed or Printed Name and Title of Custodian of File(s))

(Signature)

(Date)

21. On behalf of _____ the undersigned individual hereby acknowledges that the aforesaid Federal agency sponsors or otherwise supports the User's request for and use of HCFA data, agrees to support HCFA in ensuring that the User maintains and uses HCFA's data in accordance with the terms of this Agreement, and agrees further to make no statement to the User concerning the interpretation of the terms of this Agreement and to refer all question of such interpretation or compliance with the terms of this Agreement to the HCFA official named in section 22 (or to his or her successor).

(Typed or Printed Name and Title of Federal Representative)

(Signature)

(Date)

(Phone No. - Including Area Code and E-Mail Address, If Applicable)

22. On behalf of HCFA the undersigned individual hereby attests that he or she is authorized to enter into this Agreement and agrees to all the terms specified herein.

(Typed or Printed Name and Title of HCFA Representative)

(Signature)

(Date)

23. The disclosure provision(s) that allows the discretionary release of HCFA data for the purpose(s) stated in paragraph 6 follow(s). (To be completed by HCFA staff.)

